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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 747

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC., PETITIONER

v.

LEON HENDERSON, PRICE ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 28–34) is reported in 132 F. (2d) 729.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered December 4, 1942 (R. 34–35). The petition for a writ of certiorari was filed in this Court February 17, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the

United States, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 347 (a)).

QUESTIONS PRESENTED

(1) Whether the increase in rate for all passengers riding on buses of petitioner between points in Maryland and certain points in the District of Columbia is a "general increase" within the meaning of the Act of October 2, 1942 (Public Law 729, Chapter 578, 77th Cong. 2d Sess.) amending the Emergency Price Control Act.

(2) Whether the provisions of the Act of October 2, 1942, prohibiting a rate increase except on compliance with certain conditions, apply to an increase in rates proposed by petitioner, a common carrier, in a schedule of tariffs filed with the Interstate Commerce Commission nine days prior to October 2, 1942, the date of approval of said Act, but which rates were not to become operative until after the approval of the Act.

STATUTES INVOLVED

The statutes involved are—

(1) The Act of October 2, 1942 (Public Law 729, Chapter 578, 77th Cong., 2d Sess.);

(2) Section 217 (a) (49 U. S. C. Section 317 (a)), Section 217 (c) (49 U. S. C. Section 317 (c)), and Section 216 (g) (49 U. S. C. Section 316 (g)) of the Interstate Commerce Act, Part II (49 Stat. 558; 52 Stat. 1240; 54 Stat. 921).

These statutes appear in the Appendix, *infra*, pp. 15–25.

STATEMENT

The authorized rate of interstate fare in effect on September 15, 1942, for passengers carried on petitioner's buses between Seat Pleasant, Maryland, and points within the District of Columbia was ten cents (R. 14).

On September 23, 1942, petitioner filed with the Interstate Commerce Commission its proposed new tariffs for an increase in its rates by increasing its fare per passenger for the above-described transportation from ten to fifteen cents per passenger. This proposed tariff increase was filed pursuant to the provisions of the Interstate Commerce Act, Part II, Section 217 (a) and (c), which further provides, however, that no such change shall be made until after 30 day's notice of the proposed change is filed and posted in accordance with paragraph (a) of said section (Appendix, *infra,* p. 24). Under that Act, if the Commission took no action within the thirty-day period, the proposed tariff would become effective on October 25, 1942 (R. 19). The Commission did not take any action with respect to the proposed increase.

About 2,300 passengers daily were affected by the proposed rate increase. This represented 17.8% of all the passengers carried by petitioner over all its routes. (R. 15.)

On October 2, 1942, the Act of Congress (Public Law 729, Chapter 528, 77th Cong., 2d Sess.) to amend the Emergency Price Control Act was ap-

proved by the President. This Act provides, *inter alia,* "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the * * * authority having jurisdiction to consider such increase" (R. 1) (Appendix *infra,* pp. 15–16).

On October 3, 1942, by Executive Order No. 9250 (R. 8a, 8b; 7 Fed. Reg. 7871) the President created the Office of the Director of Economic Stabilization and delegated to him all the powers and authority given to the President under said Act. On October 14, 1942, the Director of Economic Stabilization, by Directive No. 1 (R. 9; 7 Fed. Reg. 8758), designated respondent as his representative to receive notices of increases required by this Act, and delegated to him authority to intervene before rate-making authorities in connection with proposed increases.

On October 25, 1942, petitioner exacted and thereafter continued to collect a fare of 15 cents from each of its passengers on the route above described, until restrained from doing so by a temporary restraining order issued by the District Court of the United States for the District of Columbia on November 3, 1942 (R. 12–13), and vacated on November 19, 1942 (R. 23). At no time prior to the date on which petitioner com-

menced to charge and collect the increased passenger fare was the President of the United States or any agency designated by him, given notice by petitioner or anyone else, of the proposed increase in rates filed by petitioner, as required by said Act of October 2, 1942 (R. 10).

On November 3, 1942, respondent under the authority of the Executive Order, Directive, and the Emergency Price Control Act of 1942, as amended, brought this suit in the District Court of the United States for the District of Columbia seeking a preliminary and permanent injunction against petitioner to enjoin it from unlawfully collecting the 15 cent fare in violation of the Act of October 2, 1942 (R. 1–10). Petitioner answered on November 9, 1942, claiming that the rate was lawfully in effect under the Interstate Commerce Act (R. 14–19). On November 19, 1942, the District Court entered a judgment dismissing respondent's complaint (R. 23). On November 20, 1942, respondent filed its notice of appeal from said judgment (R. 24). The appeal was heard and argued on November 23, 1942, before the United States Court of Appeals for the District of Columbia (R. 27). On December 4, 1942, the Court of Appeals rendered its opinion, and entered a judgment reversing the judgment of the District Court of the United States and instructing that court to grant respondent the relief prayed for in his complaint (R. 28–35).

ARGUMENT

The decision of the Court of Appeals is not in conflict with any other decision, nor does it fail to give proper application to any decision of this Court. While its decision of the first question could have wide application, it is so clearly correct that it does not require review by this Court.

I

The relevance of the Act of October 2, 1942, depends on whether the increase in fares put into effect by petitioner was a "general increase."[1]

As petitioner (Pet. 8) and the court below (R. 29) have pointed out, the term "general increase" does not have a defined meaning in the law of carriers, and is not used in the Interstate Commerce Act. Any indefiniteness in the term in its present application proceeds from the word "general."

The word "general" derives from the Latin "generalis" or "genus," meaning a class. Thus, as petitioner points out (Pet. 10), the word means "Relating to all of a genus, class, or order; including all of a kind" (Webster's *Twentieth Century Unabridged Dictionary;* similarly see Webster's *New International Dictionary*). The increase concerned here affects all of the interstate passengers carried on one route operated by peti-

[1] Both the District Court (R. 23) and the Court of Appeals (R. 29) held that the increase was a "general increase."

tioner (R. 15–19). It affects all passengers travelling between points in the District of Columbia and four points in Maryland, namely, Hillside, Capitol Heights, Maryland Park, and Seat Pleasant (R. 15, 19). Thus it affects all passengers of one class, and is a "general" increase according to one accepted meaning of the word.

Instances may be found in which the Interstate Commerce Commission, using "general increase" as a descriptive term, has used it to designate similar increases. Thus the Commission has used the term "general" to describe increases affecting only about 15% of the total tonnage in a particular territory (*Eastern Case,* 20 I. C. C. Rep. 243, 247); to describe increases in rates on one class of commodities or small group of commodities within a restricted territory (*Grain and Grain Products,* 122 I. C. C. Rep. 235, 264); and to describe proposed advances on one class of commodities (*Boots and Shoes from New York Points,* 91 I. C. C. Rep. 591, 597).[2]

[2] Compare the use of "general" as a descriptive term to describe legislation which affects all of a class and is therefore not discriminatory. *Harwood* v. *Wentworth*, 162 U. S. 547, 563, 564; *Peirce* v. *Van Dusen*, 78 Fed. 693, 704 (C. C. A. 6); *In re Pittsburgh*, 217 Pa. 227, 231, 66 A. 348, 350, aff'd *sub nom. Hunter* v. *Pittsburgh*, 207 U. S. 161; *People* v. *Chicago*, 349 Ill. 304, 323, 182 N. E. 419, 430: "An act is general not because it operates in every place or upon every person in the state, but because every place or person brought within the relations or circumstances provided for is affected by the law. The act is not local or special merely because it

The construction which the Administrator has given the term "general increase" in the Act is in accord with the foregoing usages. In his Procedural Regulation No. 11 (Notice of Increases in Rates and Charges of Common Carriers and other Public Utilities, issued November 12, 1942, 7 Fed. Reg. 9390), the Price Administrator has construed the term as follows:

> § 1300.901 *Definition.* For the purpose of this Procedural Regulation No. 11, a general increase in the rates or charges of a common carrier or other public utility is defined as any change in its rates, fares, classifications, rules, regulations or practices which results in an increase in the charges for transportation or other public utility service applicable to a class of passengers, shippers or customers, including increases in wholesale or industrial rates or charges for public utility services, as distinguished from an increase of rates or charges applicable to a particular customer or transportation service under special arrangement.

The Administrator's construction is consistent with the purpose of the Act,[3] which is best dem-

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operates in but one place or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. A law may be general notwithstanding the fact that it may operate in only a single place where the conditions necessary to its operation exists."

[3] The legislative history of the Act is somewhat meagre on the present question. However, the discussion of the bill

onstrated by the unreasonable consequences which would result from adoption of the construction petitioner urges. Petitioner's construction would cause the right of the Price Stabilization authorities to object to a rate increase to depend at least in some instances upon the size of the carrier or utility. Thus if petitioner had operated only the one line affected by the increase between the District of Columbia and the four points in Maryland, petitioner would agree that the increase would be general and that the Price Stabilization authorities would have the right to intervene before the Commission and object to the increase. But because petitioner operates four other lines as well, petitioner contends that the Price Stabilization authorities cannot object to the increase. Petitioner's construction would defeat the obvious purpose of the Act to prevent inflation: greater danger of inflation lies in an increase of rates on *part* of a large carrier's operations (e. g., the New York Central) than in an increase on *all* of a smaller carrier's operations (e. g., the petitioner herein).

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in its final form on the floor of the Senate by Senators Brown (the present Administrator) and Norris, the sponsors of the bill, negative the restrictive interpretation urged by petitioner. Both Senators stated that the bill in final form would require approval by the President or his agent of all rate increases by public utilities (Vol. 88, Cong. Rec. No. 168, pp. 7970, 7973). While not precise, these statements evidence that a broad application was intended.

The construction urged by petitioner is further objectionable because it would permit evasion of the requirements of the Act by piecemeal increases.

Petitioner's argument is simply that another construction of the term "general increase" is possible. Petitioner specifically admits (Pet. 8, 10) that the construction adopted by the Administrator has support in Interstate Commerce Commission decisions and in a dictionary definition. Thus the case is, at its worst, one in which the Administrator selected one of two possible constructions to be given to a statute which he was empowered to administer; such a choice is within his authority. *Gray* v. *Powell,* 314 U. S. 402, 412; *Fed. Sec. Adm'r* v. *Quaker Oats Co.,* No. 424, decided March 1, 1943. Here, indeed, the construction given is clearly the one most consistent with the purpose of the Act.

II

The second question has a much more limited application than the first. Decision of it would affect only rates which were proposed to be increased in schedules filed before October 2, 1942, to take effect thereafter.

The Act of October 2, 1942, provides:

> That no common carrier or other public utility *shall make* any general increase in its rates or charges which were *in effect* on September 15, 1942, *unless it first gives thirty days notice to the President, or such agency as he may designate,* and consents

> to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase. [Italics supplied.]

The Court of Appeals, differing from the trial court, held that the increases herein involved were not "made" before the effective date of the Act, and therefore could not be made in the absence of the thirty-day notice to the President or his designated agency.[4]

The test as to when an increase is "made" is properly resolved by reference to the Interstate Commerce Act, Part II, Section 217 (c) (49 U. S. C., Section 317 (c)) (Appendix, *infra*, p. 25), which provides—

> No change *shall be made* in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by

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[4] The Court of Appeals might have rested its decision on the ground that the Act governs the making of *any* general increase of rates *in effect* on September 15, 1942. On that ground, the date when the increase was made would be immaterial if the increase raised rates above their September 15, 1942, level. Clearly the increase herein had that effect. Had the Court of Appeals rested decision on this ground the question of retroactivity discussed by petitioner (Pet. 19, 20) might be involved. We do not discuss this ground since the Court of Appeals did not rest its decision on it and since the question of retroactivity is not involved if, as we contend, the increase in rate was "made" after October 2, 1942.

> motor vehicle, *except after thirty days' notice of the proposed change* filed and posted in accordance with paragraph (a) of this section. [Italics supplied.]

Under this provision, a carrier may not make an increase in rates by simply filing a schedule of proposed tariff with the Commission. The language of Section 217 (c) clearly compels carriers to file such proposed schedule thirty days before making an increase. The language of that section ("No change shall be made in any rate * * * specified in any effective tariff * * * except after thirty days' notice of the proposed change * * *") clearly supports respondent's contention that the filing of the proposed tariff increase does not constitute the making of an increase in a rate.[5] Thus the rate increase herein

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[5] The very nature of common carrier and public utility rate proceedings refutes petitioner's contention that rates are made when the tariff is filed with a regulatory commission. Many things may take place during the thirty day period commencing with the filing of the proposed rate which may prevent the proposed increase from ever becoming operative. Under the Interstate Commerce Act, Part II, Section 216 (g) (49 U. S. C. A., Section 316 (g)) protests may be filed during the thirty day period and the Commission may suspend rates for as long as seven months. After the Commission has conducted a hearing under the section last mentioned it may also, pursuant to the provisions of Section 216 (g) of the Interstate Commerce Act, prescribe the lawful rate or fare. These proposed rates which are set forth in the schedule of new tariffs proposed by the carrier are subject not only to suspension, but also to drastic modification or change. The increased rate or fare proposed by the peti-

was not made until October 25, 1942, thirty days after the proposed tariff was filed. The rate increase was thus unlawful as it was made without the requisite notice to the Administrator.

This conclusion is consonant with the purpose of the Act, which is the overall stabilization of factors affecting the cost of living at levels prevailing on September 15, 1942. This purpose included prices, wages, salaries in general, and (by specific reference) rates or charges of carriers. The construction of the Act urged by the Administrator carries out this purpose; the construction urged by petitioner would defeat it by permitting a general rate increase to be proposed after September 15 and to become effective after October 2, 1942, without being subject to the control of the Administrator even though its effect would be inflationary.

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tioner on September 23 was therefore subject to change or modification before ever going into effect and could not be deemed to have been made at that time.

CONCLUSION

The decision below does not present a conflict of decisions or a question of sufficient importance to warrant further review. The petition should therefore be denied.

Respectfully submitted.

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